CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

October 14, 2011

S. 605
Dangerous Synthetic Drug Control Act of 2011

As reported by the Senate Committee on the Judiciary on July 29, 2011

CBO estimates that implementing S. 605 would have no significant cost to the federal government. Enacting the bill could affect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

S. 605 would expand the list of substances regulated by the Drug Enforcement Administration (DEA) to include cannabimimetic agents, chemicals that are commonly known as synthetic marijuana. As a result, the government might be able to pursue cases involving drug use that it otherwise would not be able to prosecute. CBO expects that S. 605 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under S. 605 could be subject to criminal fines, the federal government might collect additional fines if the legislation is enacted. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases likely to be affected.

S. 605 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 605 would impose private-sector mandates, as defined in UMRA, on manufacturers, sellers, and consumers of certain synthetic chemicals. CBO estimates that the cost of complying with those mandates would probably exceed the annual threshold established in UMRA for private-sector mandates in the first year after enactment ($142 million in 2011, adjusted annually for inflation).

By adding selected chemical compounds to Schedule I of the Controlled Substances Act, the bill would prohibit the sale, distribution, or use of those chemicals without a permit issued by the DEA. The cost of that prohibition would be the forgone income from lost sales and the value of the inventory of the banned products. Because of the nature of the market being regulated, the scope of sales affected is difficult to determine. Some industry experts estimate that the profits generated by the sale of products containing such synthetic chemicals amount to billions of dollars annually.

However, based on information from industry and law enforcement experts, CBO expects that, by the date of the legislation's enactment, most vendors will have largely replaced the banned substances with new products because many states have already passed legislation banning some or all of the compounds listed in the bill**;** because the DEA has already issued an emergency rule temporarily banning five cannabimimetic agents**;** and because vendors are already anticipating passage of federal legislation. Thus, the cost of the mandate would be much smaller than the profits currently being earned in the industry. Given the estimated magnitude of industry profits, however, it would only require about a 5 percent to 10 percent decrease in profits for the costs to exceed the annual threshold for private-sector mandates. Consequently, CBO estimates that the cost of the mandate would probably exceed the annual threshold in the first year following enactment. Thereafter, costs would be minimal, CBO estimates.

The bill also would impose a mandate by requiring individuals and facilities that wish to use or handle the banned chemicals to register with the DEA. Individuals who are unable to obtain DEA approval would have to dispose of the banned chemicals in their possession. CBO expects that the cost to those individuals would be small. Because some of those compounds have been temporarily placed under Schedule I of the Controlled Substances Act by the emergency rule issued by the DEA in 2011, most research facilities investigating those synthetic compounds have already registered with the DEA. The legislation would not require them to register again with the DEA; therefore, CBO expects the cost of the mandate to private research facilities to be small.

The CBO staff contacts for this estimate are Mark Grabowicz (for federal costs) and Michael Levine (for the impact on the private sector). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.